

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P. O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JAN -8 PM 3:44

JEANNE MOORE, CLERK /

BY: V. Adams

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. P1300CR20081339

Division 6

**DEFENDANT'S REPLY IN
SUPPORT OF MOTION IN
LIMINE RE: DNA-RELATED
TESTIMONY**

The State's response that it is "ludicrous" for its testifying experts to be limited to the language of the scientific reports on DNA is telling. The Court has already addressed attempts by the State to mislead and confuse the grand jury with testimony regarding forensic evidence with a caution in its Order granting Mr. DeMocker's Motion for New Finding of Probable Cause on January 22, 2009. In that Order, the Court advised that where an officer had testified that something was "consistent" where the DPS report had only indicated it was "similar," it is best to employ the same language. The Court reasoned that it would not speculate on whether the intention of the witness was to make the case "appear better by using other language and omitting

1 the qualifying language.” (January 22, 2009 Order at page 4). The State is attempting
2 to clear the way for its further obfuscation of the DNA results in this case and that is
3 precisely why counsel raised these issues in its motion *in limine*.

4 The State apparently agrees with counsel that parts of this motion will require an
5 evidentiary hearing and argument only after full disclosure has been made. The reason
6 that parts of the motion are—to use the phrase chosen by the State—“exceedingly
7 premature” is that the State’s disclosure with respect to forensic evidence has been
8 made at a glacial pace. We are less than 4 months from trial. The disclosure deadlines
9 are now more than 6 months behind us, yet the State is only now testing items that have
10 been in its possession for over a year and a half for forensic evidence. It is essential that
11 in the hearings scheduled for next week the Court address these issues.

12 The State fails to address any of the areas of concern raised in the motion that
13 can and should be addressed by the Court at the hearings the week of January 12, 2010.

14 --The male DNA under the victim’s fingernail. The State should be prohibited
15 from calling witnesses to testify in a manner that might be designed to suggest that the
16 presence of biological evidence under the victim’s fingernail should be discounted or
17 ignored by the jury. One possibility suggested by prior testimony in this case is that the
18 State will seek to minimize this evidence by suggesting that the male DNA might have
19 resulted from the use of unsterilized nail clippers used during the autopsy. This should
20 be prohibited given the State’s disclosure on this topic. The State should be prohibited
21 from attempting to elicit testimony that the DNA profile (Evidence Item 603) is a partial
22 profile and should be prohibited from opining that the exclusion of Steve DeMocker is
23 “inconclusive.”

24 --Other partial male DNA profiles found on light bulbs, the cordless phone, and
25 the door handle. The State should be prohibited from eliciting testimony that does not
26 exclude Steve DeMocker from each of these DNA extractions or suggests that testing
27 with respect to Mr. DeMocker on these extractions is “inconclusive.” The State should
28

1 be prohibited from offering any laboratory or law enforcement witness to suggest to the
2 jury that the partial DNA profiles might be "consistent with" Steve DeMocker's DNA.
3 The State has a complete DNA profile taken for STR comparison purposes. The State
4 knows—or should know—that the male DNA found on each of these items (light bulbs,
5 phone and door handle) excludes Steve DeMocker.

6 The Court should address the DNA-related testimony issues that can be
7 addressed now and be advised that future issues will likely develop if and when the
8 State complies with its disclosure obligations. The State's demonstrated tendency to
9 misleadingly present the DNA-related testimony threatens to deprive Mr. DeMocker of
10 a fair trial otherwise secured to him by the Fifth, Sixth, Eighth and Fourteenth
11 Amendments of the United States Constitution and the corollary provisions of Arizona's
12 Constitution.

13 Respectfully submitted this 8th day of January, 2010.
14
15

16 By: 

17 John M. Sears
18 P. O. Box 4080
19 Prescott, Arizona 86302

20 OSBORN MALEDON, P.A.
21 Larry A. Hammond
22 Anne M. Chapman
23 2929 N. Central Avenue, Suite 2100
24 Phoenix, Arizona 85012-2793

25 Attorneys for Defendant

26 ORIGINAL of the foregoing filed
27 this 8th day of January, 2010, with:

28 Jeanne Hicks,
Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COPIES of the foregoing hand delivered
this 8th day of January, 2010 to:

The Hon. Thomas B. Lindberg
Judge of the Superior Court
Division Six
120 S. Cortez
Prescott, AZ 86303

Joseph Butner, Esq.
Office of the Yavapai County Attorney
Prescott courthouse box



2907794